

National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: May 22, 1991

TO: Francis E. Dowd, Regional Director, Region 12

FROM: Robert E. Allen, Associate General Counsel, Division of Advice

SUBJECT: International Longshoremen's Association, AFL-CIO International Longshoremen's Association, Local 1359-1860, AFL-CIO (Coastal Stevedoring Company), Cases 12-CC-1226

220-5000, 560-2550-1700, 220-7501, 560-2550-5000, 220-7517, 560-2575-3300

This case was submitted for advice as to whether the Union violated Section 8(b)(4)(i) and (ii)(B) when it induced members of a Japanese stevedoring union to refuse to unload in Japan goods that had been handled in the United States by a stevedoring company with which the Union has a primary dispute and where the Japanese union directly or indirectly communicated to various neutral entities in Japan and the United States its intention to honor the Union's request, thereby causing neutral entities to cease or alter business relationships in the United States. ⁽¹⁾

BACKGROUND

The Union and Charging Party Coastal Stevedoring Company (Coastal) are engaged in a primary dispute over Coastal's use of non-Union labor at the Port of Fort Pierce in Florida. ⁽²⁾ The Union has not attempted to organize Coastal's unrepresented employees within the instant 10(b) period. ⁽³⁾ Coastal's principal source of income is the loading of Florida grapefruit onto ships bound for Japan during an export season which runs from November through May.

The shipments from Fort Pierce to Japan are pursuant to export-import agreements between a number of American fruit exporters, including DNE Sales International (DNE), Indian River Citrus Sales (IRCS), ⁽⁴⁾ Sealed Sweet Sales, Dole Citrus, Ziegler Corp. and Golden River Fruit Company ⁽⁵⁾ and various Japanese importers, such as Sumisho Fruits and Vegetables Co. Ltd. ⁽⁶⁾ and Imperial Corporation Tokyo. The Japanese importers contract with various shipping carriers for the transportation of the grapefruit to Japan. For example, Sumisho contracts with a shipping company, Cool Carriers (Svenska) AB (hereafter, "Cool-Stockholm"), through its Japanese agent, Interocean Shipping Corporation. ⁽⁷⁾ Other shipping companies scheduled to pick up grapefruit at Fort Pierce in the 1990-91 season included Japan Reefer Carrier Co. Ltd. and Nissui Shipping. Coastal loads the Japan-bound ships pursuant to contracts with these carriers. The grapefruit shipments are unloaded in Japan by employees of Japanese stevedoring companies. The grapefruit are then received by the Japanese importers.

Prior to the commencement of the events at issue herein, approximately ten vessels were scheduled to be loaded at Fort Pierce with grapefruit for export to Japan between November 6, 1990 and early May 1991. Sumisho, one of the Japanese importers of the first shipment, ⁽⁸⁾ which was scheduled to be loaded on November 6, had contracted with Cool-Stockholm, which would use the vessel, the El Triunfo, to transport the cargo. ⁽⁹⁾ The El Triunfo was not loaded in Fort Pierce on November 6, and, instead, was diverted to Tampa for loading by Union stevedores. To date, no other grapefruit shipments have been loaded by Coastal at Fort Pierce.

The diversion of the El Triunfo and the other ships previously scheduled for loading in Fort Pierce arose against the backdrop of a variety of written communications concerning the Union's dispute over the Charging Party's use of non-ILA labor. These documents, as analyzed infra, comprise the evidentiary basis for the theory of violation developed herein. Thus, the evidence includes two letters from the Union to Toshio Kamezaki, President of the National Council of Dockworker's Unions of Japan (the Dockworkers). The first letter, dated October 4, 1990, enlists Kamezaki's support in connection with the Union's primary dispute with the Charging Party, inter alia, by bringing the Union's primary dispute "to the attention of. . . the Japanese

shippers and importers who are directly and indirectly involved." The second Union letter, dated November 6, 1990, thanks Kamezaki for his organization's successful role in the diversion of the El Triunfo and seeks their continued efforts on the Union's behalf. The remaining documents consist of certain internal memoranda from Kamezaki's organization and/or other Japanese union entities undertaking to act on the Union's behalf, other memoranda from these Japanese unions to the above-described Japanese importers, importers' association and shippers urging them to take steps to encourage the use of union labor at Fort Pierce, and certain cables and datafax messages from various neutral importers and shipping companies to American exporters and/or the Charging Party seeking guidance in connection with rumors that the Japanese unions planned to refuse to unload grapefruit handled by non-Union employees of the Charging Party.

ACTION

We conclude that complaint should issue, absent settlement, alleging that the Union has violated Section 8(b)(4)(i)(ii)(B) of the Act by entreating its Japanese counterparts to induce work stoppages by their members and to publicize to neutral entities their intention to accede to such Union requests for the prohibited object of causing those and other neutrals to alter their established business relationships and modes of operation in the United States, all in furtherance of the Union's primary dispute with Coastal.

A. Theory of Violation

1. The Union's conduct would violate Section

8(b)(4)(B) if engaged in within the United States.

There can be no dispute that the Union's request that the Japanese union members strike their employer by refusing to handle grapefruit loaded by nonunion Coastal employees would, if made to an American union, constitute (i) inducement. Furthermore, in *International Longshoremen's Association (Kansas Farm Bureau)*, 264 NLRB 404, 405, 408 (1982), *enfd.* 723 F.2d 963, 115 LRRM 2093 (D.C. Cir. 1983), the Board found that conduct similar to that engaged in by the Union here constituted (ii) conduct against all neutrals, even those the Union had not directly communicated with. There, as part of the ILA's boycott of Russian products in protest of the 1980 Soviet invasion of Afghanistan, the union induced the employees of a neutral stevedoring employer to strike; the stevedoring company communicated the strike threat to the neutral seller of grain, the neutral ships' agent under contract to transport grain and the Soviet purchaser of grain. The Soviet purchaser directed the neutral ship it had hired to transport the grain not to stop at the struck port as scheduled, and, instead, diverted the ship to another port. The Board found the union's boycott was (ii) coercion against all neutrals.

As to inferring that the union had a "cease doing business" object prohibited by Section 8(b)(4)(B), ⁽¹⁰⁾ the union's object appropriately may be inferred from the reasonably foreseeable consequences of its conduct. See *ILA v. Allied International, Inc.*, 456 U.S. 212, 224, 110 LRRM 2001 (1982). ⁽¹¹⁾ Thus, when an announced course of union conduct reasonably can be expected to threaten neutral parties with substantial economic loss if they continue to do business with each other or the primary, it is appropriate to infer that at least one of the objects of the boycott is to force the neutral to cease doing business with the primary or with each other. See, e.g., *Kansas Farm Bureau*, 264 NLRB at 407-408 (cease doing business object inferred because union could foresee that its boycott would cause grain not to be moved from affected port, that Soviet grain purchases from the neutral American exporter would be disrupted, and that neutrals, such as the American shipping and stevedoring companies and the foreign ship, would cease doing business with both the Soviet importer and the American grain exporter). Accord: *International Longshoremen's Ass'n, Local 799 (Allied Int'l Inc.)*, 257 NLRB 1075, 1084 (1981); *International Longshoremen's Association, Local 1414 (Occidental Chemical Company)*, 261 NLRB 1, 4-5 (1982).

In the instant case, the Union appealed to the Japanese union to have its members refuse to unload, in Japan, grapefruit that had been loaded by Coastal. It further asked the Japanese union to make the request known to "interested parties." The Union itself named as interested parties "Japanese shippers and importers." It is reasonably foreseeable that other "interested parties" who would learn of the request would be the American exporters with whom the Japanese importers contract for the sale of grapefruit and any non-Japanese shipping carriers hired to transport the goods. Just as in the Russian boycott cases, the Union could reasonably foresee here that the Japanese union's honoring the Union's requests would cause neutrals in the United States to change their business arrangements among themselves and to sever their ties to Coastal so as to avoid the adverse

consequences of the boycott of grapefruit handled at Fort Pierce. Since Coastal does no business with the Japanese companies, the foreseeable consequence of the Union's (i) and (ii) conduct could not have been that these companies would cease doing business with Coastal. Rather, it was plainly foreseeable that (i) and (ii) conduct in Japan would result in a chain reaction of causing neutrals in the United States (i.e., growers and shippers) to cease doing business with Coastal.

Accordingly, the "conduct" and "object" elements of 8(b)(4)(i) and (ii)(B) violations are met. The remaining question is whether the foreign situs of the inducement and of the Japanese union's communication of its intention to honor the boycott request precludes 8(b)(4) jurisdiction. [\(12\)](#)

2. The geographical limitations on the Board's

jurisdiction do not preclude issuance of complaint.

In our view, the Board has not resolved the question raised herein, i.e., whether the prohibition of Section 8(b)(4) extends to secondary conduct occurring outside the United States if engaged in to force a cessation of business among persons within the United States. In a series of cases the Board and courts have made clear that the Board's power to regulate conduct outside the territorial United States is limited. The basis for this limitation is to preserve comity among nations and avoid interfering in the internal operations of foreign employers and their foreign employees. [\(13\)](#) The Board has specifically denied, however, that jurisdiction is precluded "simply because that activity had some relation to foreign maritime operations." *Kansas Farm Bureau*, 264 NLRB at 405-406. Specifically, in *Occidental Chemical Company*, the Board held that the ILA's threat not to handle Soviet cargoes carried on two foreign flagships under charter to an American chemical company was "precisely the type of conduct prohibited by Section 8(b)(4)(i) and (ii)(B) of the Act," (261 NLRB at 4) and that the foreign nationality of the two affected ships did not prevent the union's conduct from being "classically subject to the proscriptions of Section 8(b)(4)." 261 NLRB at 3. Thus, the foreign ships were "still 'persons' entitled to protection as proscribed targets of secondary activity prohibited by Section 8(b)(4)(B)." *Ibid*.

The Board's further observation about the difference between the union's conduct with respect to the foreign neutrals in *Occidental* and the jurisdiction-limiting concerns present in *Windward* and *Mobile*, *supra*, is instructive in the instant case. The Board noted (261 NLRB at 3) that the holdings of *Windward* and *Mobile* are premised on the conclusion that the Board does not have jurisdiction over "primary conduct which interferes with foreign maritime operations." In *Mobile*, the Court held the Board was deprived of jurisdiction over the secondary effects of such primary conduct because the secondary effects were inextricably intertwined with the primary conduct. That is, because the secondary pressure was an integral part of an effort to achieve the primary objective that was outside the Board's jurisdiction to regulate, the secondary conduct also was not subject to Board regulation. In contrast, the Board noted, there was no true primary labor dispute in *Occidental* and the secondary conduct was thus "not intertwined with primary activity which would be beyond the Board's jurisdiction." *Id.* at 4. The Board further noted that the union's secondary activity was predominantly directed against American entities and that directed against the foreign ships did not "affect the internal affairs of a foreign ship so as to implicate international maritime trade policies, international affairs, or principles of comity" as was the case of the union activity in *Windward* and *Mobile*. *Ibid*.

The Supreme Court similarly distinguished *ILA v. Allied International, Inc.* from *Windward*, *Mobile* and the other cases cited in note , noting that the boycott of Russian products was not aimed at affecting labor relations or maritime operations of foreign vessels; rather, all the conduct was aimed at neutral American entities. 456 U.S. at 219-222. See also *Allied International*, 257 NLRB at 1079-1082, distinguishing these cases.

The instant case may not be factually identical to the Russian boycott cases in that the Union's secondary pressure was not "predominantly directed against American entities" (*Occidental*, 261 NLRB at 4) but equally directed at American and foreign entities. We believe, however, that the principles by which the Supreme Court and the Board distinguished *Windward*, *Mobile* and the other jurisdiction limiting cases cited in note are equally applicable here. Thus, unlike *Windward et al.* and like the Russian boycott cases, the Union's primary dispute here is not over the labor relations of a foreign employer. To the contrary, the secondary pressure here is in furtherance of a primary dispute designed to affect the labor relations of an American employer in the United States, a dispute squarely subject to the Act's regulation. Section 8(b)(4)(B) is designed precisely to limit the scope of such primary labor disputes. That is, the secondary boycott provisions of the Act preserve "the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes" but at the same time "shield[]

unoffending employers and others from pressures in controversies not their own." *NLRB v. Denver Building & Construction Trades Council*, 341 U.S. 675, 692, 28 LRRM 2108 (1951).

Furthermore, using Section 8(b)(4) to protect the business relations of neutrals in the United States from the pressure of secondary conduct engaged in abroad does not implicate concerns about comity or interference with foreign government's regulation of labor relations in their own country in the same manner that led the Board to construe its jurisdiction narrowly in cases such as *RCA OMS, Inc.* ⁽¹⁴⁾ and *GTE Automatic Electric, Inc.* ⁽¹⁵⁾ In those cases, the Board followed the rationale of the Supreme Court's jurisdiction limiting cases -- to avoid conflicts with the laws and affairs of other nations. The Board has, however, asserted jurisdiction and extended the protections of the Act in other cases where, even though conduct occurred outside the territorial boundaries of the United States, asserting jurisdiction did not implicate interests of comity. See, e.g., *Great Lakes Dredge and Dock Co.*, 240NLRB 197, 199-200 (1979)(Board jurisdiction asserted where ULP, i.e., refusal to hire American employees for service on vessels destined to operate in Saudi Arabia, was committed in United States by foreign employer's domestic agent and employer had other substantial American contacts); *Alcoa Marine Corporation*, 240NLRB 1265 (1979)(Board jurisdiction extends to United States flag oceanographic research vessel permanently berthed outside the United States territorial waters; *RCA OMS* and *GTE Automatic* inapposite because they involved land-based operations where personnel, including American employees, are subject to the laws of the country in which they are employed; by contrast, employees on the research vessel not subject to laws of a foreign country); *Freeport Transport, Inc.*, 220 NLRB 833 (1975) (jurisdiction over freight terminal located in Canada where U.S. citizen and resident employed at the terminal was discharged for his union activity in U.S. and among American employees; discriminatee performed all delivery hauling work in U.S.; Canadian terminal operations under day-to-day coordination with U.S. headquarters; work assignments and payroll prepared and records kept in U.S.; distinguished from *RCA OMS* where employees worked exclusively in Greenland and the controversy arose in Greenland). ⁽¹⁶⁾

Asserting jurisdiction over the Union's conduct herein would not interfere with sovereign interests of Japan or conflict with Japanese laws regulating labor relations among Japanese employees, their employers and their union. No Japanese union would be a respondent in the case and we would seek no order directing a Japanese union or its members to take, or refrain from, any action. Conduct of the Japanese unions and their members would be implicated only by an allegation that the Union was responsible for instigating such conduct and by an order directing the Union to cease and desist from such instigation. The limited impact such an order might have on the labor relations of Japanese employers and their employees hardly rises to the concerns that gave rise to the jurisdiction limiting cases. The instant case is much more akin to the situation in *Ariadne*. Accordingly, the Board has jurisdiction herein to protect neutrals doing business in the United States from being enmeshed in the Union's wholly American primary dispute with Coastal.

B. Supporting Evidence

We recognize that the evidence available to substantiate the foregoing theory of violation is somewhat limited in scope and that the Union may raise defenses to the admission of certain documents into evidence. However, as the following general discussion shows, these problems are not insurmountable.

Thus, such problems of proof can generally be handled in the following manner: The ILA's visit to Japan and its letter seeking assistance can be proved through the testimony of [*FOIA Exemptions 6 and 7(c) and (d)*]

[]. The letters from the Dockworkers and the other Japanese unions to the Japanese employers, at least in part, can be authenticated by [*FOIA Exemptions 6 and 7(c) and (d)*], one of the Japanese importers herein, who will be produced at the hearing by the Charging Party. Other communication from the Japanese importers and employers to United States neutrals can be authenticated by those neutrals. ⁽¹⁷⁾ As noted above, there are at least four such neutrals: *IRCS*, a United States grower; *DNE Sales*, a United States grower; *Cool Carriers*, a foreign shipper doing business in the United States; and *Japan Reefer*, a foreign shipping company doing business in the United States. ⁽¹⁸⁾

In this connection, we note that the precise relationship between the Dockworkers and the other Japanese union entities involved here is not entirely clear. However, as discussed *infra*, the evidence is sufficient to establish that the "Japan Labor Union Association" and/or the "Japan Seamen's Union," which promulgated certain of the evidence upon which we would rely

to establish the instant Section 8(b)(4)(i) and (ii)(B) violation, were cloaked with apparent authority to act on the Union's behalf. ⁽¹⁹⁾

There is also sufficient evidence arising from the internal characteristics of such documents and their relationship in time to external events to authenticate all of the documents for introduction into evidence within the meaning of Rule 901(a) of the Federal Rules of Evidence. Thus, it is clear that documents can be authenticated under Fed.R.Evid. 901 by means other than direct testimony, including by circumstantial evidence under Rule 901(b)(4). ⁽²⁰⁾ Accordingly, even to the extent we do not have witnesses to authenticate a given document by direct testimony as to its creation and custody, there is sufficient circumstantial evidence to authenticate the various documents under the above-cited cases. For example, certain of the documents by their terms refer to external events, such as ILA President Bowers' April 1990 visit to Japan for meetings with Japanese union representatives ⁽²¹⁾ or to other documents, including references to the Union's admitted October 4, 1990 solicitation of support from its Japanese counterpart. The coincidence in timing between the promulgation of these and other documents from Japanese union entities to neutrals and the Union's request for the Dockworkers' assistance, the actual diversion of the *El Triunfo* from Fort Pierce to Tampa on November 6, and the Union's letter of the same date thanking President Kamezaki of the Dockworkers for his successful efforts on the Union's behalf, also supports the conclusion that the documents are what they purport to be within the meaning of Fed.R. Evid. 901(a).

The Union would argue that the letters from the Dockworkers or the other Japanese unions to the Japanese employers and those from the Japanese employers to United States neutrals constitute inadmissible hearsay. However, as defined by Fed.R. Evid. 801, a hearsay statement is one offered to prove the truth of the matter asserted. If the significance of the statement lies solely in the fact that it was made, rather than to prove the matter of the truth asserted by the statement, the statement is not hearsay. For example, if a supervisor tells or writes an employee that he is going to fire the employee if the employee signs a union card, the employee may testify to this statement without running afoul of the hearsay rule. It is not hearsay, and, hence, is admissible because the statement is not offered to prove that the employee will in fact be fired-- it is merely introduced to show that the statement was made, the statement itself being violative of Federal law. Similarly, a statement by a union official to a neutral employer that it will be picketed if it does not cease doing business with a primary employer typically is admissible, even when the only evidence of such a union statement is offered by the neutral himself. Thus, an affected neutral may testify as to such threats in an 8(b)(4) case because the fact that the threat has been uttered is the operative event underlying the statutory violation. Here, the letters to and among the various neutrals and/or the Charging Party will not be introduced to prove the truth of the matter asserted (i.e., that grapefruit will not be unloaded in Japan if non-ILA labor is used at Fort Pierce), but rather to show that the (ii) statements were made and disseminated to and/or among neutrals in a foreseeable chain reaction. ⁽²²⁾ Accordingly, the documents are not hearsay and are admissible.

An additional reason why the letters do not constitute hearsay is found in Rule 801(d)(2) where it is provided that a statement by a party's agent concerning a matter in the scope of the agency is admissible and does not constitute hearsay. Here, the written statements by the Dockworkers and the other Japanese unions were made as agents of the ILA, a party to the proceeding.

In light of the foregoing general discussion concerning authentication and admissibility, we set forth the following outline, by element of the prima facie case, of the evidence attributing these developments to unlawful secondary pressure by the Union and its agents:

1. Section 8(b)(4)(i)(B) Conduct

(A) Direct Conduct by ILA

1.App. B; Ex. 3, ⁽²³⁾ the Union's October 4 letter embodies the ILA's request for the Dockworkers' support in connection with its dispute with Coastal. The request for "your further support in denying the unloading and landing of these picketed products" is plainly inducement of a work stoppage in an 8(b)(4) sense.

a.As noted above, there should be no evidentiary problems, as [FOIA Exemptions 6 and 7(c) and (d)] can be subpoenaed to authenticate the document. The Union does not deny the authenticity of the letter.

2.App. B; Ex. 12, the ILA's November 6 "thank you" letter to the Dockworkers similarly constitutes evidence of Union (i) conduct. Thus, the letter advises the Dockworkers of the successful diversion of the El Triunfo from Fort Pierce to Tampa as "a direct result of your very timely and effective notices to relevant parties in Japan of your support for our efforts." After thanking the Dockworkers for their prior support, the ILA goes on to request the Dockworkers' "continued efforts on our behalf. . . ."

b.This letter is written on ILA letterhead and signed by "Ernest H. Lee, Special Consultant." It can be authenticated either by [FOIA Exemptions 6 and 7(c) and (d)] testimony or, inasmuch as [FOIA Exemptions 6 and 7(c) and (d)] states in the letter that he is writing at "president Bowers' request," by [FOIA Exemptions 6 and 7(c) and (d)]. Although the Union has not expressly authenticated this letter, it does not deny responsibility for it. The letter also confirms receipt of the October 4 letter by the Dockworkers.

(B) 8(b)(4)(i) Conduct Attributable to the ILA

1. Conduct by Others:

c.App. B; Ex. 9, dated October 29, 1990, addressed to "All officials, managers, union chairmen, and local harbor chairmen" would support an allegation of 8(b)(4)(i)(B) inducement of the addressees by the Dockworkers in Japan by, inter alia, instructing the addressees to "take maximum cooperative action for the Japanese side concerning said [Florida] citrus exports" and to await information being provided as to the "specific dates, shipping companies, ships and harbors as soon a FAX information arrives from the ILA."

i.The professional translator has indicated some problems in translating the name of the sender of this memorandum because the sender's name is partially obscured by two "chops," or seals, stamped on the letter as signatures. ⁽²⁴⁾ However, by comparing Exhibit 9 with Exhibit 4 (described infra), the translator has concluded that the sender's name on Exhibit 9 is "most likely" Toshio Kamezaki, the Dockworkers' President and addressee of the Union's October 4 and November 6, 1990 letters. Absent a stipulation by the Union, it may, however, be necessary to subpoena the translator to confirm that Exhibit 9 is attributable to Kamezaki.

ii.In this regard, we note that the professional translator has translated the name of Kamezaki's organization as the "National Longshoremen's Labor Union." In our view, absent any evidence to the contrary, it is reasonable to conclude that this organization and the Dockworkers are the same entity. Thus, although not entirely free from doubt, the internal reference to the receipt of the Union's October 4, 1990 "request for international cooperation" would provide further corroboration of the authenticity of Exhibit 9 as a Dockworkers' document.

2. Agency Status of Non-ILA Entities:

a.ILA responsibility for the Dockworkers' "cooperative action" letter of October 29, 1990 (App. B; Ex. 9) can be established based upon the ILA's October 4 request to the Dockworkers for assistance (App. B; Ex. 3), the Dockworkers' accession to this request, as articulated in App. B; Ex. 9, and upon the ILA's subsequent ratification of the Dockworkers' efforts in the November 6 "thank you" letter (App. B; Ex. 12). Thus, the Union created an agency relationship between itself and the Dockworkers in App. B; Ex. 3, the Dockworkers held themselves out as possessing this agency authority in App. B; Ex. 9, and the Union ratified the actions of its agent in App. B; Ex. 12.

2. Section 8(b)(4)(ii)(B) Conduct

(A) Direct Conduct by ILA

There is no evidence of any direct secondary communication by the Union to any neutral entities in the United States.

(B) Conduct Attributable to the ILA/

1. Conduct by Others:

--As discussed above, the communication of an intent to engage in a boycott that threatens economic harm to neutral entities violates Section 8(b)(4)(ii)(B). We believe that the following exhibits, to the extent they can be authenticated and admitted into evidence, can be relied upon to establish such prohibited conduct:

a.App. B.; Ex. 1: This April 10, 1990 memorandum from the President and Vice-President of the "Japan Labor Union Association" to the "Shipping Companies" concerns "[a] request regarding harbor cargo handling in Florida, U.S.A." Inter alia, the document discusses the recent visit of certain ILA representatives to Japan and the acceptance of the ILA's request for "cooperation." The document reflects the further request that the addressees instruct "those concerned" to "give the job of loading Florida export citrus fruit to loading companies that hire ILA union employees" in order to "maintain order at the ports." This plainly runs afoul of Section 8(b)(4)(ii)(B). [\(25\)](#)

i. With respect to authentication, *[FOIA Exemptions 6 and 7(c) and (d)]* will testify that *[FOIA Exemptions 6 and 7(c) and (d)]* received multiple copies of the April 10 memorandum by datafax from various shipping companies, including Japan Reefer, Nissui and Interocean.

ii. As with Exhibit 9, supra, the identity of the Japanese union body sending this memorandum and its relationship to the Dockworkers are somewhat unclear. Thus, the professional translation indicates that the memorandum is from the Japan Labor Union Association's President, whose name is illegible on the exhibit, and its Vice-President, Shoshiro Nakanishi. [\(26\)](#)

iii. The lack of clarity as to the specific relationship between the Japan Labor Union Association and the Dockworkers does not mean that the document cannot be authenticated. Thus, *[FOIA Exemptions 6 and 7(c) and (d)]* can be expected to at least confirm under oath his visit to Japan and his meeting with the Association. Even assuming that *[FOIA Exemptions 6 and 7(c) and (d)]* will not admit to soliciting the Association's support, the confirmation of the April 1990 visit, coupled with references in other documents, i.e., Exhibits 5 and 6, to the Union's visit, arguably comprise circumstantial evidence sufficient to permit the introduction of the document for the purpose of showing that the document's request that the shipping company-addressees "direct those concerned" to use ILA labor was made on the Union's behalf.

b.App. B; Exs. 5 and 6: These October 22 memoranda are identical except for their addressees, "Importers" (Ex. 5) and "Shipping Companies" (Ex. 6). According to the professional translation, the memoranda are from Shoshiro Nakanishi, President of the Japan Seamen's Union. [\(27\)](#) The documents each (1) advise the Japanese importers and shipping companies of the ILA's ongoing dispute with the non-Union stevedoring operations, inter alia, at Fort Pierce, and (2) suggest that the addressee importers and shippers take steps to "avoid trouble at above harbors" by "direct[ing] those concerned to give the job of loading Florida citrus fruit for export to loading companies that hire ILA union employees." Plainly, these exhibits embody prohibited 8(b)(4)(ii)(B) coercion, in that the memoranda "predict" economic harm to such parties whose citrus fruit-related business would inevitably be harmed if the Japanese stevedores refused to unload the boats in Japan. Such economic impact is coercive in a (ii) sense and the foreseeable consequences of such "news" would be that the coerced-neutrals would seek to adjust their business relationships in order to avoid the consequences of the threatened strike in Japan.

i. These documents, like Exhibits 1 and 9, supra, can also be authenticated with reference to other evidence and surrounding circumstances. Thus, Exhibits 5 and 6 specifically refer to Exhibit 1 ("the communication dated April 10th of this year"). Indeed, the translated text of the last paragraph of the October 22 memoranda is virtually identical to the translation of the last sentence of the final paragraph of Exhibit 1. Such similarities and internal references would tend to meet the criteria for authentication by circumstantial evidence in the cases cited in n., supra. Similarly, the statement in these exhibits "[a]s we stated in the communication dated April 10th. . . ." is probative evidence that Exhibits 1, 5 and 6 are attributable to the same organization.

ii. In addition, although not entirely free from doubt, it appears that at least Ex. 5 can be authenticated by *[FOIA Exemptions 6 and 7(c) and (d)]*, who states that he received an original of the document addressed to Sumisho. Thus, Ex. 5 is addressed to "importers" and *[FOIA Exemptions 6 and 7(c) and (d)]* will testify that Sumisho received a copy of the memorandum identical to the one in the Region's possession. *[FOIA Exemptions 6 and 7(c) and (d)]* is a Sumisho official and received the memorandum in the normal course of *[FOIA Exemptions 6 and 7(c) and (d)]* business. *[FOIA Exemptions 6 and 7(c) and (d)]* ability to authenticate the memorandum may, however, be limited with respect to identifying (as opposed to translating) the signature stamp on the memorandum. We do not have a witness as to the receipt of Ex. 6 to the shipping companies, although

[*FOIA Exemptions 6 and 7(c) and (d)*] could possibly authenticate Ex.6, as he received copies from Nissui Shipping and Japan Reefer Carrier in the ordinary course of Sumisho's business with both of these carriers.

c.App. B; Ex. 4, the October 19 memorandum from the Dockworkers to the importers' trade association, Nisseikyo, provides additional evidence of the Union's secondary "scheme." (28) Thus, the memorandum conveys the Dockworkers' intention to honor the Union's request for "cooperation at all harbors to stop the shipping of citrus to Japan from Fort Pierce Port and from Canaveral Port." The Dockworkers further state that "we have resolved to actively support [the ILA's] current request. . . and to take cooperative action in Japanese harbors." As such, the memorandum to the trade association announces an intention to engage in an unspecified course of action ("to stop the shipping of citrus" from Florida and to "take cooperative action" in Japan) at the Union's request. It is clear that the Union reasonably could foresee that this announced intention would cause Japanese companies, such as Nisseikyo member-importers, to cease doing business with neutrals in the United States in order to avoid the adverse effects of the threatened actions.

i. With respect to authentication, [*FOIA Exemptions 6 and 7(c) and (d)*] can testify that Sumisho, a member of Nisseikyo, received a copy of the October 19 memorandum from the trade association.

ii. There may be a further authentication problem in that the copy of the memorandum in our possession does not contain any "signature" stamps. However, the internal reference to the Union's October 4, 1990 letter supports the authenticity of this document as a response to the Union's admitted request to bring the primary dispute to the attention of "the Japanese shippers and importers who are directly and indirectly involved" (Exhibit 3). In this regard, Exhibit 4 is carboned to "Ship Owner's Association" as well.

iii. In any event, given the strength of the other evidence that neutrals doing business in the United States have been subject to secondary pressure, e.g., App. B; Exs. 5 and 6, establishing this document as evidence of Union (ii) coercion is not crucial to establishing the 8(b)(4)(ii) case in chief. In addition, although clearly neutral to the Union's dispute with Coastal, Nisseikyo does not do business in the United States and would not, in its own right, be a beneficiary of the Act's protection under the instant theory of violation.

d.App. B; Ex. 7: The October 26 datafax from the Japanese importer Imperial Corporation Tokyo to the Ed Miller Co./Indian River Citrus Sales (IRCS), a U.S. grower/exporter was sent in connection with the scheduled loading of the El Triunfo at Fort Pierce on November 6. The message advises IRCS that the ILA "asked Japanese union to tell our Japanese importers, shipping companies and port people to understand and cooperate with them" and that it cannot guarantee that IRCS' grapefruit will be unloaded in Japan "if Port Fierce (sic) enforce to load fruit without union [ILA] workers." Imperial therefore advises IRCS that "our stance is that we would like to ask you to find out the situation how Fort Pierce handle this vessel. Please kindly let us know." Despite the indirect and polite language used, Imperial's message presents further evidence of the (ii) pressure being brought to bear upon neutrals in connection with the Union's primary dispute with Coastal.

i. The Region should be able to subpoena a witness from IRCS to authenticate Imperial's datafax.

e.App. B; Ex. 10, an October 30 datafax from Sumisho to DNE in which Sumisho advises DNE that "shipping company, Japanese Cool Storage people and B/C members are very nervous to this problem. So that we think Cool Carriers have to change from Fort Pierce to Tampa in this time." Sumisho advised DNE that its action was pursuant to a datafax message, received from Cool-Stockholm and quoted in Sumisho's fax to DNE, concerning rumors that "Japanese union will accept I.L.A. request from Tampa" and asking Sumisho to "nominate loadport."

i. This exhibit does not present any authentication problems; both [*FOIA Exemptions 6 and 7(c) and (d)*] and witnesses from DNE are available to testify. [*FOIA Exemptions 6 and 7(c) and (d)*] can testify as to Sumisho's receipt of the Cool-Stockholm datafax message as well.

f.App. B; Ex. 11, a November 6 memorandum from Japan Reefer Carrier to Coastal also can be relied upon as evidence of (ii) conduct. Thus, the memorandum embodies Japan Reefer's request for Coastal's comments regarding certain letters and rumors to the effect that Japan Reefer's ships will not be unloaded by Japanese union members in Japan if loaded with non-Union labor at Fort Pierce, and advises Coastal that it will be obliged to send its ships to Tampa if Coastal cannot settle its dispute

with the ILA.

i. Coastal witnesses will be available for authentication.

2. Agency Status of Non-ILA Entities:

a. The fact that some of the above documents, i.e., App. B.; Exs. 1, 4, 5, and 6, do not bear the Dockworkers name or "chop" does not relieve the ILA of responsibility for acts done in its name. Rather, having accorded agency authority to the Dockworkers in the October 4 letter (App. B; Ex. 3), and having ratified acts done by the Dockworkers in the November 6 letter (App. B; Ex. 12), the Union also has implicitly ratified the acts of any entities holding themselves out as acting on the Union's behalf. Such entities, e.g., the Japan Labor Union Association, the Seamen, or the "signatory" union officers whose chops are affixed to various documents (e.g., App. B. Ex. 1), would thus be cloaked with apparent authority and their acts would be equally binding upon the Union. ⁽²⁹⁾ Furthermore, under this agency/apparent authority analysis, having ratified acts done in its name, the Union cannot avoid responsibility on the technical ground that documents such as App. B; Exs. 1, 5 and 6 do not contain the signature stamp of the Dockworkers, where the documents were disseminated under the Dockworkers' name and/or by their terms, purport to have been promulgated in response to the Union's request for assistance in connection with the primary dispute with Coastal. Finally, the fact that the (ii) message is not communicated directly by the Union or its agents in Exhibits 7, 10 and 11 but through other affected neutrals is irrelevant under Kansas Farm Bureau. See discussion at p., supra.

(C) Cease Doing Business Object

As set forth above, it is clear that a prohibited Section 8(b)(4)(ii)(B) object can be inferred where a cessation or alteration of neutral entities' business relationships can reasonably be foreseen from a union's actions. In the instant case, there is ample evidence of chain reaction pressure upon United States neutrals that was obviously anticipated by the ILA when it sought out the Dockworker's assistance. This pressure reasonably could be expected to cause the neutrals to alter their means of doing business, in connection with and in furtherance of the Union's primary dispute with Coastal. Thus, the following documents can be relied upon to demonstrate that the foregoing (i) and (ii) conduct was undertaken with a prohibited object:

1. App. B; Ex. 1: It is foreseeable from the reference to the "problem regarding harbor cargo handling on the East Coast of the U.S.A." and from the specific request that the shipping companies receiving the April 10 memorandum instruct "those concerned" to use Union stevedores in order to "maintain order at the ports" that such "concerned" parties would follow the shipping companies' advice and choose not to do business with Coastal.

2. App. B; Ex. 3: The Union's October 4 letter is a near admission that its reason, i.e. object, for enlisting the assistance of the Dockworkers was to put pressure on and enmesh neutral entities in the United States in its dispute with Coastal.

3. App. B, Ex. 4, the October 19 memorandum from the Dockworkers to Nisseikyo requests the Japanese importers' "understanding" in connection with the Dockworkers' decision to support the Union's October 4 request for assistance by taking, albeit unspecified, "action in Japanese harbors." The memorandum states further that "[i]n our opinion, the way to resolve this problem quickly is for your organization to influence those concerned among importers and shipping companies to use ILA union members for harbor work at Port [sic] Pierce Port and at Canaveral Port so that normal labor relations at those harbors may be established." Thus, the memorandum can be viewed as a statement of the Dockworkers' intention, on behalf of the ILA, to pressure neutrals with the disruption of the unloading of their citrus imports unless or until Union members are employed, inter alia, at Fort Pierce. That Nisseikyo and its neutral members would succumb to such pressure and take steps to assure that they did not import grapefruit handled by nonunion labor can reasonably be expected to follow from the Dockworkers' message, and hence, supports an inference of a prohibited (ii) object.

4. App. B; Exs. 5 and 6: It is clearly foreseeable that the importers and shipping companies receiving these memoranda would communicate, as requested, the message to their contractors, including such American fruit exporters as DNE, and that such "concerned" parties would anticipate and seek to avoid the potential economic harm that would be caused by a refusal to unload their citrus in Japan. It is equally foreseeable that such neutrals, including DNE, would seek to avoid the adverse economic consequences of the threatened strike in Japan by adjusting their business relationships, including, inter alia, by ceasing to do business with Coastal. Thus, the October 22 memoranda also are probative evidence of the Union's prohibited

"cease doing business" object.

5.App. B; Ex. 7: The October 26 datafax from Imperial Corporation Tokyo to IRCS also evinces the Union's prohibited object in that Imperial communicates the linkage created by the Union and the Dockworkers between the threatened strike in Japan and the use of Union labor at Fort Pierce and asks IRCS to "find out the situation how Fort Pierce handle this vessel. Please kindly let us know." It is reasonably foreseeable that in response to this communication, IRCS would at least contemplate sending its grapefruit elsewhere for loading in order to ensure that the fruit would be unloaded in Japan. Accordingly, this exhibit would support the inference that the contemplated boycott was for the prohibited object of causing neutrals as IRCS to cease doing business with Coastal.

6.App. B., Ex. 8 similarly evinces the Union's "cease doing business" object. Thus, the October 30 telex from Nissui Shipping advises Coastal that they had received notice "from 'I L A' through 'J S U' to use their own union member (sic) for loading citrus at Fort Pierce and Canaveral. If not so they will carry out picket." Nissui then asks Coastal for its "advice" in light of Nissui's plans to send vessels to Fort Pierce 2-3 times in the coming season. Again, this cable provides further evidence of pressure upon neutrals, such as Nissui, and supports the inference that an object of the threatened refusal to unload Nissui's ships in Japan was the desire to have Nissui cease doing business with Coastal.

7.App. B; Ex. 11, the November 6 memorandum from Japan Reefer to Coastal strongly supports the inference that the threatened boycott of grapefruit cargoes in Japan was designed to pressure Japan Reefer, a neutral carrier, to cease doing business with Coastal because Coastal did not employ union members, an objective clearly prohibited by Section 8(b)(4)(ii)(B). Thus, the memorandum demonstrates that Japan Reefer determined that it had no alternative but to divert its ships from Fort Pierce to Tampa in order to avoid the adverse consequences of the work stoppage in Japan threatened by the Seamen at the request of the ILA.

8.App. B; Ex. 12, the Union's November 6 letter reaffirms the object identified in the October 4 letter: to halt loading at Fort Pierce and Port Canaveral unless or until union labor is employed at the ports. Thus, in addition to attributing "[t]he diversion to Tampa" to the Dockworkers' "very timely and effective notices to relevant parties in Japan of your support for our efforts," thanking the Dockworkers, and asking for its continued support with future shipments, the letter states that "[r]ather than diversions, we would be pleased to see Incoming (sic) vessels contracting with and employing union stevedores at Port Canaveral and Fort Pierce for their unloading and ours we believe this can be accomplished." Thus, the Union specifically links the Dockworkers' successful publication "to relevant parties in Japan" to the Union's primary dispute with Coastal. Accordingly, Ex. 12, like Ex. 3 (the October 4 letter), is a virtual admission by the ILA that its appeals to the Dockworkers and the Dockworkers' ensuing actions on the Union's behalf were for the object of causing these "concerned parties" to cease doing business with Coastal and/or each other. That is to say, the reasonably foreseeable consequences of the ILA's request, once communicated to "concerned parties," including shipping companies hired by Japanese importers to carry American grapefruit and the American exporters, would be a decision by some or all of these entities to cease doing business with Coastal.

CONCLUSION

In summary, we conclude that complaint should issue, absent settlement, and that Section 10(l) proceedings be initiated, if necessary under the criteria set forth in the Casehandling Manual, to enjoin the Union from further violating the Act. Thus, the complaint should allege that the Union has violated Section 8(b)(4)(i)(B) by eliciting the assistance of the Dockworkers to induce work stoppages by the Japanese stevedores in furtherance of the Union's primary dispute with Coastal, and Section 8(b)(4)(ii)(B) by requesting and causing to be disseminated to neutral entities the Japanese unions' intentions to accede to such Union requests for the prohibited object of causing such neutrals to alter their established business relationships and modes of operation in the United States. In this connection, the Union cannot credibly deny seeking the cooperation of the Dockworkers or any of the other Japanese unions that have acted on its behalf in connection with the primary dispute. Thus, the Union cannot deny thanking the Dockworkers for the initial successful diversion of the El Triunfo, or enlisting the Dockworkers' additional assistance in publicizing the potential secondary boycott to neutral entities. Nor can the Union deny that the Dockworkers acted at its behest, and thus must accept the consequences of its agents' actions. Finally, even to the extent crucial memoranda cannot be attributed to the National Council of Dockworker's Unions of Japan, the object of the Union's direct request for support, the other Japanese union entities have held themselves out as acting pursuant to the Union's request to the Dockworkers, and, hence, were at least arguably cloaked with apparent authority to communicate with the importers,

shippers, carriers and other neutrals on behalf of the Dockworkers and the Union for the purpose of making the Union's coercive message known to all interested parties in violation of the Act.

R.E.A.

¹ The present case, which involves the primary dispute between the Union and Charging Party Coastal at the port of Fort Pierce, Florida, was submitted in conjunction with Cases 12-CC-1227-1 and 12-CC-1227-2, which involve essentially the same Union conduct, but different Charging Parties, i.e., Canaveral Port Authority and Port Canaveral Stevedoring, Limited. These related cases will be addressed in a separate memorandum.

² Coastal and the Port of Fort Pierce appear to be related companies. The Port is not a charging party herein and there is no contention that the two entities are separate persons.

³ The Respondent Local Union did send a letter, dated September 24, 1990, to Coastal seeking a meeting to discuss the use of Local members in the upcoming grapefruit season. Coastal did not respond to the letter and there is no allegation that the Local's letter is unlawful.

⁴ IRCS is also referred to as "Ed Miller Co."

⁵ All of these exporters are separate entities from Coastal. Further, although DNE shares a common corporate parent with Coastal, the Region has determined that DNE is wholly neutral with respect to the instant labor dispute.

⁶ Sumisho is a member of Nisseikyo (a/k/a "Japan Fresh Produce Import Facilitation Association"), which appears to be the equivalent of a trade association. Sumisho is also part of the B/C, a consortium of citrus importers. B/C members have grapefruit shipped to Japan as a group.

⁷ Cool-Stockholm is a Swedish corporation. Its wholly-owned subsidiary, Cool Carriers (USEC), Inc. operates in Tampa as Cool-Stockholm's United States agent.

⁸ The ship was scheduled to carry grapefruit from several American exporters to several Japanese importers.

⁹ The ownership of the El Triunfo is unknown. It is not an American flag vessel.

¹⁰ It is clearly established that Section 8(b)(4)(B) refers to cessations of business among neutrals as well as a cessation of business between neutrals and the primary. See, e.g., *Miami Newspaper Pressmen's Local 46 (Knight Newspapers, Inc. v. NLRB)*, 322 F.2d 405, 410, 53 LRRM 2628 (D.C. Cir. 1963); *Salem Building Trades Council (Cascade Employers Ass'n)*, 163 NLRB 33, 35 (1967), *enfd.* 388 F.2d 987, 67 LRRM 2512 (9th Cir.), *cert. denied*, 391 U.S. 965 (1968). And, it encompasses not only the complete cessation of a neutral's business relationships with other entities, but also embraces the alteration of the manner in which business is conducted. *NLRB v. Operating Engineers, Local 825 (Burns & Roe)*, 400 U.S. 297, 304-305, 76 LRRM 2129 (1971).

¹¹ Accord: *Local 761, IUE v. NLRB*, 366 U.S. 667, 674, 48 LRRM 2210 (1961) (look to the nature of the acts themselves); *Seafarers v. NLRB*, 265 F.2d 585, 591, 43 LRRM 2465 (D.C. Cir. 1959); *Allied Concrete v. NLRB*, 607 F.2d 827, 830, 102 LRRM 2508 (9th Cir. 1980); *Soft Drink Workers Local 812 v. NLRB*, 657 F.2d 1252, 1261-62, 105 LRRM 2658 (D.C. Cir. 1980) (practical realities of the situation considered).

¹² Although the Union did not concede that the Union's conduct would clearly have violated the Act had it occurred entirely within the United States, it has relied for the legality of its conduct exclusively on the argument that "everything" occurred in

Japan and outside the reach of the Board's jurisdiction.

¹³ See, e.g., *Benz v. Compania Naviera Hidalgo, S.A.*, 325 U.S. 138, 144, 39 LRRM 2636 (1957) (NLRA jurisdiction extends only to "the workmen of our own country and its possessions" and does not regulate the labor relations of foreign employees employed by foreign flag vessels, even where such vessel is located in U.S. territorial waters); *McCulloch v. Sociedad de Marineros de Honduras*, 372 U.S. 10, 21-22, 52 LRRM 2425 (1963) (absent evidence of Congressional intent to permit incursion into sensitive area of international relations, Board lacks jurisdiction to certify American union as representative of foreign employees on foreign flag vessels, despite ships' regular presence in U.S. waters, where Board action would encroach on foreign ship's internal operation); *Windward Shipping Ltd. v. Radio Assn.*, 415 U.S. 104, 112-13, 85 LRRM 2385 (1974) (statutory language must be construed so as to satisfy longstanding principles of comity and avoid interference with international trade); *American Radio Assn. v. Mobile Steamship Assn., Inc.*, 419 U.S. 215, 87 LRRM 3145 (1974) (where picketing of foreign ships in protest of their payment of substandard wages to their foreign employees is outside Board's jurisdiction because Board regulation would infringe upon foreign maritime operations, no Board jurisdiction over secondary effects on domestic employers).

¹⁴ 202 NLRB 228, 228 (1973) (Board lacks jurisdiction over Danish employer doing business in Greenland, even though employees hired in the United States).

¹⁵ 226 NLRB 1222 (1976) (Board jurisdiction does not extend to American employers of American employees doing business in Iran). See also *State Bank of India*, 229 NLRB 838, 841 (1977) ("all legislation is prima facie territorial. . . extraterritorial effect may not be given by implication"). In that case, however, the Board asserted jurisdiction over a foreign employer doing business in the United States. See also *State Bank of India*, 273 NLRB 264 (1984) and 273 NLRB 267 (1984), *enfd.* 808 F.2d 526, 124 LRRM 2001 (7th Cir. 1986).

¹⁶ See also *ILA Local 1416, etc. v. Ariadne Shipping, Ltd.*, 397 U.S. 195, 200 (1970) (Board has jurisdiction to regulate union's dispute with foreign flag vessel over hiring of nonunion casual American stevedoring labor for stevedoring services in American ports; *Benz* and *McCulloch* not controlling because the American casual stevedores were not involved in any way in the ships' internal affairs that are governed by foreign law).

¹⁷ See *Emich Motors Corp. v. General Motors*, 181 F.2d 70 (7th Cir. 1950) *rev. on other grounds*, 340 U.S. 558 (letters from customers complaining about automobile dealership not inadmissible hearsay when offered by officials of automobile manufacturer to show basis for manufacturer's actions against dealership; letters not offered to prove merits of the complaints).

¹⁸ *Neutrals Cool Carriers and Japan Reefer* do business directly with the primary, Coastal. Growers IRCS and DNE Sales do business with Cool Carriers and Japan Reefer. In order to show pressure on the four United States neutrals, it will be necessary to subpoena Peter Gripenberg of Cool Carriers from whom we have an affidavit and an official from IRCS. The letter to DNE Sales can be authenticated by Inoue, who sent it, and Coastal can testify as to the letter from Japan Reefer.

¹⁹ The Dockworkers were cloaked with express agency authority by virtue of the Union's October 4 and November 6, 1990 letters.

²⁰ See, e.g., *United States v. Whitworth*, 856 F.2d 1268, 1282-83 (9th Cir. 1988) (series of anonymous letters implicating members of espionage ring authenticated, admitted into evidence, and attributed to participant in the conspiracy; fact that letters had numerous points in common with other facts known to be within alleged author-defendant's specialized knowledge, the letters' postmarks corresponded to defendant's known whereabouts at the relevant times, and coincidence in timing of the first letter with the triggering event in defendant's alienation from his co-conspirators all deemed probative circumstantial evidence of authenticity); *United States v. Eisenberg*, 807 F.2d 1446, 1452-53 (8th Cir. 1986) (unsigned letter found among criminal defendant-co-conspirator's personal belongings in an envelope addressed to him and other indicia tending to link contents of the letter to known facts about the defendant and the alleged conspiracy held sufficient circumstantial evidence to authenticate the letter for introduction into evidence; "the contents of a document, its substance, appearance or other distinctive characteristics taken in conjunction with the circumstances of each case can help authenticate a document"); *Zenith Radio*

Corp. v. Matsushita Elec. Ind. Co., 505 F. Supp. 1190, 1223-24 (E.D. Penn. 1980)(production in civil discovery held an element of circumstantial evidence tending to authenticate documents).

²¹ [FOIA Exemptions 6 and 7(c) and (d)].

²² See Emich Motors Corp. v. General Motors, supra, n., in which the Seventh Circuit held that letters sent by customers to General Motors complaining about the plaintiff dealership were admissible when offered by General Motors because they were offered not to prove the merits of the complaints but to show information upon which General Motors acted when it canceled the dealership's contract.

²³ Unless otherwise indicated, all references are to the appendices ("App.") and exhibits ("Ex.") attached to Coastal's January 16, 1991 Supplemental Position Statement. Where the documents are written in Japanese, we refer to the professional translations, and not the English translations submitted with the January 16 position statement.

²⁴ See Zenith Radio Corp. v. Matsushita Elec. Ind. Co., 505 F. Supp. At 1224 (Japanese "chop" contains a stylized rendition of a person's name and "should be given weight consideration of the fact that chops may not always be genuine or may be affixed by others can be given to the particular use of a "chop" on a given document). Mr. Inoue, of Sumisho, has also explained to the Region that the small round chops indicate the signature of an individual, including an officer of an organization and that the larger, square stamps indicate institutions."

²⁵ Thus, based upon the specific references in the April 10 memorandum to "harbor cargo handling in Florida, U.S.A." and "a problem regarding harbor cargo handling on the East Coast of the U.S.A.," it seems clear, despite the reference to U.S.-Japan trade friction, that the document is urging cooperation with the Union's primary dispute with Coastal.

²⁶ The translation indicates that Nakanishi is also the President of the Japan Seamen's Union. It is unclear whether the translator has drawn these names and/or official designations from the printed text of the memorandum or from the "chops" affixed thereto. Again, these ambiguities can be resolved by calling the translator as a witness. In addition, in the event the names are translations of the chops, Inoue may be able to testify that he recognizes them as genuine based upon his prior dealings with the relevant Japanese unions.

²⁷ As noted above, Nakanishi was also signatory to Exhibit 1 in his capacity as Vice-President of the Japan Labor Union Association.

²⁸ To establish Exhibit 4 as a memorandum from the Dockworkers, see the discussion of Exhibit 9, supra.

²⁹ See generally "Creation of Apparent Authority: General Rule," Restatement of Agency, Second, Sec. 27 (1958).